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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/771,623

02/05/2004

Siegfried Hapke

31512-199620

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EXAMINER

PHAM, HOA Q

ART UNIT

PAPER NUMBER

2877

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/771,623	Applicant(s) HAPKE ET AL.	
	Examiner Hoa Q. Pham	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 24-38 is/are rejected.
- 7) ☒ Claim(s) 14-23 and 39-44 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/5/04&6/16/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to because the figures are handwriting and blurring. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-5, 7-13, 24, 26-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Goehlich (DE-2729576) (of record).

Regarding claims 1, 4, 5, 9-10, 24, 26, 27, Goehlich discloses a radiation source (30) to direct a variable orientation beam of radiation against the article (8) occupying a predetermined position whereby the article intercepts a portion of the beam which indicative of the transverse dimension of the article; a device (32) for generating on the basis of the influenced beam of radiation signals denoting the transverse dimensions of the article in plural orientations of the article and beam relative to each other; and means (27-29) for selectively altering the orientation of the beam and the at least one article relative to each other.

Regarding claims 7 and 28, see rollers (22) and motor (29) in figure 1.

Regarding claims 8 and 35-38, see figure 1 for the relationship between the light beam and the cable (8).

Regarding claims 11 and 29, see abstract for the purpose of photodiode (33) of detecting the section profile of the article.

Regarding claims 12-13, see claim 7 above.

Regarding claims 30-33, see claim 7 above.

Regarding claim 34, figure 1 shows that the light source (30) and detector (32) are moved around the article (8) by 180 degrees.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3, 6, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goehlich in view of Hapke et al (5,715,843).

Regarding claims 2 and 25, Goehlich does not explicitly teach that the article is a smoker's product; however, such a feature is known in the art as taught by Hapke et al. Hapke et al (of record), from the same field of endeavor, discloses a method and apparatus for measuring diameter of rod shaped articles of the tobacco processing industry in which the diameter of the cigarette is measured on the basis of the optical system (4, 6, 14-16) (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the basic device of Goehlich to measure the dimension of smoker's product as taught by Hapke et al because the device would function in the same manner.

Regarding claim 3, Hapke et al teaches the use of a collimator (6) and outlet (9) for projecting a light beam on to the article; it would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Goehlich a set of

optical elements as taught by Hapke et al to ensure that the light beam is focused at the article. Thus, an accuracy of the measurement is obtained.

Regarding claim 6, Hapke et al teaches that the article is rotated to determine the diameter of the article (column 4, lines 51-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to rotate the articles of Goehlich instead of rotating the light source and detector as taught by Hapke et al because they would function in the same manner.

Allowable Subject Matter

7. Claims 14-23 and 39-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

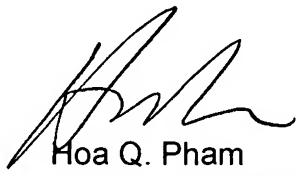
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references relate to an apparatus and method for determining the cross-sectional dimensions of an object: Richter (5,457,537), Biswas et al (5,028,798), Wogerbauer (5,212,539), Whitchose (6,407,818), Felix (3,461,299) and Jazbec (5,072,121).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-

2426. The examiner can normally be reached on 7:30AM to 6 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Hoa Q. Pham
Primary Examiner
Art Unit 2877

HP
January 7, 2007